U. S. 625. The case under discussion would appear, however, to be the first in which a contention has been clearly made and carried up to the Supreme Court of the United States, that such a tax was obnoxious to the Fourteenth Amendment of the Federal Constitution. The appellants apparently despaired of convincing the court that the tax would deprive them of their property without due process of law, but insisted that it was in conflict with the clause forbidding the States to deny to any citizen the equal protection of the laws. The court, in an extremely well written opinion by Mr. Justice McKenna, returns the answer that might have been expected. The phrase "equal protection of the laws" is so evidently intended to be indefinite that the court has never attempted to fix its meaning. They have often declared, however, that almost no classification of persons for purposes of taxation can be held to interfere with this provision of the Constitution, so long as all within a class are treated alike. Only a discrimination obviously based on grounds wholly foreign to the proper ends of government could be held unconstitutional. In the Illinois Inheritance Tax Law, as in all other similar laws, there is a classification which seriously affects the operation of the tax; the division depending in the first place on the degree of relationship of the legatee to the testator, and secondly, on the amount of the legacy. The division rests in the first case on obvious natural grounds, and in the second case on economic principles long recognized in the tax laws of every country. This decision of the Supreme Court, it may be hoped, will finally settle the validity of all such laws under the Federal Constitution; while the line of reasoning pursued in the opinion may tend to dissuade State courts from a narrow construction of restraints imposed by State constitutions upon the power of taxation.

Charitable Institutions and the Rule of Respondeat Superior. — In carrying on the functions of government, it is often needful to delegate to boards of individuals some portion of the governmental power. Such boards, in the absence of personal neglect, are not answerable for the faults of the servants they officially employ. The reason given is that the servants also become agents of the government. Non-governmental corporations engaged in rendering gratuitous services to the public, in view of their essentially public character, were at first regarded as falling under the class of governmental boards. *Holiday* v. *St. Leonards*, 11 C. B. N. S. 192. Later cases, however, notably *Mersey Docks Trustees* v. *Gibbs et al.*, 11 H. L. 686, have settled the law for England that only corporations with strictly governmental powers are to be exempt from this liability. American courts have generally held that charitable corporations were not liable. The first cases followed *Holiday* v. *St. Leonards*, *supra*, and treated charitable corporations as governmental corporations. But the reasoning of the later English cases soon led them to abandon this position, and they now base their decisions on the ground of a distinct exception to the rule of *respondeat superior*. *Hearns* v. *Waterbury Hospital*, 66 Ct. 98. See 9 Harvard Law Review, 541. The last case on the point is *Ward* v. *St. Vincent's Hospital*, 52 N. Y. Sup. 466. Here the corporation was a public charitable institution, which did no business for profit, and which devoted the sums received from the patients who wished to pay, to the current expenses. The plaintiff was a pay patient, and was severely burned through the negligence of a nurse. The court

held that as the hospital had used due care in the selection of the nurse they were not answerable for the plaintiff's injury.

This decision seems correct on principle as well as on authority. As a general rule it is unjust to make a man who is personally free from fault answerable for the torts of another. The rule that makes a master liable for the torts of a servant appears to have but one justification that can stand the test of reason, namely, that as the master receives all the incidental benefits of his servant's labor he should also bear the incidental burdens. However well this may apply in the ordinary cases of agency, the justification seems wanting in a case like the present, where the real beneficiaries are the patients and not the corporation. As a practical matter it may be said also that unless the strongest reason demands it, the courts should not cripple the beneficent work of such institutions by forcing them to pay damages. Holding them liable when their trustees are personally blameless will not only work an injury to the public directly, but will have an appreciable effect in the future in discouraging donations. Damages granted against corporations are notoriously large, and charitable persons will refuse to give if they are led to believe that their money will eventually go to pay undeserved judgments and lawyers' fees.

A LIMITATION UPON THE TRANS-MISSOURI FREIGHT DECISION. — In the decision of the Trans-Missouri Freight Case one loophole was left by which to escape the sweeping rule that all contracts in restraint of trade, even if reasonable, are void under the Trust Act of 1890. *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290. "A contract," said Mr. Justice Peckham, "which is the mere accompaniment of a sale of property, and thus entered into for the purpose of enhancing the price at which the vendor sells it, which is in effect collateral to such sale, and where the main purpose of the whole contract is accomplished by such sale, might not be included within the letter or spirit of the statute in question." Acting upon this dictum, the court in a recent New York case, in the Appellate Division of the Supreme Court, found the statute inapplicable to a case arising out of the following facts. The plaintiff had contracted with the defendant, for valuable consideration, to convey to him for a limited period his goodwill in the business of freighting the Haiti Packets and vessels for Port-au-Prince, agreeing not to solicit freight or to compete in the business during the term. The plaintiff now sued for the first three months' instalments of the purchase money, alleging performance on his part. The defendant contended that the plaintiff's agreement not to compete, although at common law it would have been binding as a reasonable restraint, was void under the Trust Act of 1890; and that this vitiated the whole contract. The court, however, decided that since the agreement in question was merely collateral to the sale of the goodwill, it was therefore valid. *Brett* v. *Esel*, New York Law Journal, May 13, 1898.

The decision of the New York court is salutary, and the court were certainly justified in making use of any reasonable loophole afforded by the United States Supreme Court. The reason of that loophole, however, is more in doubt. It is true, as Mr. Justice Peckham points out, that most of the contracts partially in restraint of trade that have been allowed have been collateral to transfers of property; but the courts in those cases would have been rather surprised if they were told that they could